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the corporation was within the charter powers of the corporation. The secretary of the corporation, managing the business, made the contract on behalf of the corporation, and the treasurer, with knowledge of the facts, made payments to the engineers in pursuance of the contract. The president denied that the board of directors ordered the work to be done, or authorized the contract, but admitted the necessity of having the work done. The secretary and treasurer were a majority of the board of directors and owned four-fifths of the stock. Held, that the corporation was bound by the contract, notwithstanding any irregularity in its inception.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 1611-1614; Dec. Dig. § 406.* 3 Va.-W. Va. Enc. Dig. 564.]

Appeal from Circuit Court, Buchanan County.

Suit by Meem, Haskins & Mitchell against the Big Ax Pocahontas Coal Company and others. From a decree denying relief, complainants appeal. Reversed and remanded.

J. Powell Royall, of Tazewell, and *L. J. Holland*, of Bluefield, W. Va., for appellants.

Eugene Withers, of Danville, and *Flannagan & Boyd* and *Williams & Combs*, all of Grundy, for appellees.

WOODEN *v.* COMMONWEALTH.

Sept. 9, 1915.

[86 S. E. 305.]

1. Assault and Battery (§ 71*)—Guilt by Presence.—The mere presence of a person at the time and place of an assault, without any act, word, or gesture in aid of it, with nothing to show he advised it, will not render him guilty; mere knowledge not being enough.

[Ed. Note.—For other cases, see Assault and Battery, Cent. Dig. § 87; Dec. Dig. § 71.* 1 Va.-W. Va. Enc. Dig. 730.]

2. Criminal Law (§ 560*)—Evidence—Degree to Prove.—To justify a verdict of guilty, it is not sufficient that the evidence create a suspicion or probability of guilt; it must exclude every reasonable hypothesis, except that of guilt.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1266; Dec. Dig. § 560.* 4 Va.-W. Va. Enc. Dig. 90.]

3. Assault and Battery (§ 91*)—Evidence—Sufficiency.—In a prosecution for assault, evidence held insufficient to sustain verdict of guilty.

[Ed. Note.—For other cases, see Assault and Battery, Cent. Dig. § 136; Dec. Dig. § 91.* 1 Va.-W. Va. Enc. Dig. 734.]

Appeal from Corporation Court of Buena Vista.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Percy Wooden was convicted of assault with an intent, and he appeals. Reversed and remanded.

Hugh A. White, of Lexington, for appellant.

Jno. Garland Pollard, *Atty. Gen.*, and *C. B. Garnett*, *Asst. Atty. Gen.*, for the Commonwealth.

NORFOLK & W. RY. CO. *v.* A. J. STEELE & SON.

Sept. 9, 1915.

[86 S. E. 124.]

1. Appeal and Error (§ 1047*)—Harmless Error—Summons Duces Tecum.—Any error in not quashing summons, issued at plaintiffs' instance, under Code 1904, § 3371, as to production of a writing in the adversary's possession, was harmless; defendant not only relying on, and insisting that plaintiffs were bound by the data given in its answer to the summons, but introducing witnesses to prove the same facts.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4132, 4133, 4146-4152; Dec. Dig. § 1047.* 1 Va.-W. Va. Enc. Dig. 547.]

2. Carriers (§ 211*)—Live Stock Shipment—Time of Confinement—Extension—Written Request.—An indorsement in the handwriting of one of the firm of shippers in the blank margin of the bill of lading satisfies the proviso of Act June 29, 1906, c. 3594, 34 Stat. 607 (U. S. Comp. St. 1913, §§ 8651-8654), that time of confinement of a shipment of live stock without unloading for rest and food, fixed at 28 hours, may be extended to 36 hours on the written request of the owner, "separate and apart from any printed bill of lading or other railroad form."

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 926-928; Dec. Dig. § 211.* 2 Va.-W. Va. Enc. Dig. 692.]

3. Carriers (§ 218*)—Limiting Liability—Agreed Value.—The provision in a contract of shipment of cattle that the carrier assumes liability to the extent only of the agreed valuation does not protect it against all liability, if the cattle sell in the market for as much as the agreed valuation, notwithstanding damage from injury or delay; but the shipper can recover any damage, not exceeding the valuation.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 674-696, 927, 928, 933-949; Dec. Dig. § 218.* 2 Va.-W. Va. Enc. Dig. 692.]

4. Carriers (§ 218*)—Contracts—Exempting from Liability.—Provision in a contract of shipment of cattle for acceptance by the shipper as full compensation for damage from any unusual delay, whether or not caused by the carrier's negligence of the amount of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.